Cases—Continued

	Page
Molz v. *Hansell*, 115 Pa. Super. 338, 175 Atl. 880	10
Neely v. *Tennessee, G. & A. R. Co.*, 145 Ga. 363, 89 S.E. 325	9
Perry v. *Sun Coal Co.*, 183 Tenn. 141, 191 S.W. 2d 181	10
Philip v. *Heraty*, 135 Mich. 446, 97 N.W. 963	9
Pope v. *Missouri Pacific Ry. Co.*, 175 S.W. 955	10
Schurink v. *United States*, 177 F. 2d 809	9
State Street Trust Co. v. *White*, 305 Mass. 547, 26 N.E. 2d 356	11
Toledo, Wabash & Western Ry. Co. v. *Brooks*, 81 Ill. 245	9
Tuft's Estate, In re, 228 Wis. 221, 280 N.W. 309	9
United States v. *Robinson*, 40 F. 2d 14	9
United States v. *Snyder*, 177 F. 2d 44	9
Vaughan v. *Dalton-Lard Lumber Co.*, 119 La. 61, 43 So. 926	9
Woodward v. *United States*, 341 U.S. 112	8

Statutes:

Death on the High Seas Act, 41 Stat. 537, 46 U.S.C. 761, 762:	
Section 1	2, 7
Section 2	2, 7
Federal Employers' Liability Act (45 U.S.C. 51)	8
Jones Act (46 U.S.C. 688)	9
Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 909)	9
National Service Life Insurance Act (38 U.S.C. 802(g))	9
Suits in Admiralty Act, 41 Stat. 526, as amended, Secs. 2, 3 (46 U.S.C. 742, 743)	3
War Risk Insurance Act (38 U.S.C. 511)	9
New York Civil Practice Act, Section 1140-a	8

Miscellaneous:

Black's Law Dictionary (3d ed.), p. 1521	11
9 Schneider, *Workmen's Compensation Text* (1950 ed.), § 1910	10
Webster's New International Dictionary (1948 ed.), p. 2102	11

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 556

CHARLES H. LAWSON, AS ADMINISTRATOR OF THE GOODS, CHATTELS AND CREDITS WHICH WERE OF ANTONIO SCULL CARDENAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The first opinion of the United States District Court for the Southern District of New York (R.A. 24a) is reported at 88 F. Supp. 706. The second opinion of the District Court (R.A. 42a) is unreported. The opinion of the United States Court of Appeals for the Second Circuit (R.A. 118) is reported at 192 F. 2d 479.

JURISDICTION

The judgment of the Court of Appeals was entered on November 5, 1951 (R.A. 124). The petition for a writ of certiorari was filed on January 29, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether both the lawful wife and the putative wife of a bigamous seaman may recover damages, under the Death on the High Seas Act, 46 U.S.C. 761, *et seq.*, as the seaman's "wife" or "dependent relative."

STATUTE INVOLVED

Sections 1 and 2 of the Death on the High Seas Act, 41 Stat. 537, 46 U.S.C. 761, 762, state as follows:

> * * * That whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.
>
> SEC. 2. That the recovery in such suit shall be a fair and just compensation for the pe-

cuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

STATEMENT

This litigation resulted from a collision on the high seas on March 30, 1945, between two vessels owned by the United States. The collision caused the death of a seaman, Antonio Scull Cardenas, employed on one of the vessels, and the petitioner, his administrator, brought suit against the United States under the Death on the High Seas Act, *supra*.[1] The District Court entered a final decree awarding the petitioner, as administrator, $2,000 for the benefit of Paula Liendo, the decedent's lawful wife,[2] and $13,250 for the benefit of Antonia Martinez, the decedent's putative wife. On appeal, the decree was modified by striking out the award of $13,250 for the benefit of Antonia Martinez.

1. *Facts*—Briefly summarized, the relevant facts are as follows: Cardenas, a citizen of Cuba, married Paula Liendo on June 9, 1943, at New Orleans, Louisiana (R.A. 106a-107a). Shortly thereafter, he obtained employment as a seaman and executed

---

[1] Consent to such a suit is conferred by Secs. 2 and 3 of the Suits in Admiralty Act, 41 Stat. 526, as amended, 46 U.S.C. 742, 743.

[2] The status of Paula Liendo as the legal wife of the decedent has not been questioned and is not challenged here.

a certificate of designation of beneficiary under the Second Seamen's War Risk Policy, naming Paula Liendo his wife and sole beneficiary (R.A. 95a). No change of beneficiary was ever made. On July 27, 1943, after seven weeks of marriage, Cardenas left New Orleans and deserted his wife (R.A. 58a, 62a).

On March 10, 1945, Cardenas went through a marriage ceremony with Antonia Martinez in New York City (R.A. 69a). In his affidavit for the license to marry, Cardenas swore that he had not previously been married (R.A. 16a). Less than two weeks later, on March 21, 1945, he joined the ship on which he met his death on March 30, 1945 (R.A. 16a, 9a). In the shipping articles he named Antonia Martinez as next of kin and made an allotment of $100 per month to her (R.A. 16a).

On April 20, 1946, an agreement was made between Paula Liendo and petitioner, as general guardian of Antonia Martinez, which provided that the War Risk Insurance payable on Cardenas' life be apportioned $4,000 to Paula Liendo and $1,000 to Antonia Martinez, subject to the consent and approval of the War Shipping Administration (R.A. 19a).[3] By checks dated June 26, 1946, the insurance proceeds were paid to Paula Liendo and

---

[3] The agreement further provided that the balance of any net residuary estate of Cardenas be divided 70 percent to Antonia Martinez and 30 percent to Paula Liendo, that petitioner be appointed administrator of the Cardenas estate, and that he institute suit to recover damages for Cardenas' death and collect any assets due the estate (R.A. 19a).

to petitioner, as guardian of Antonia Martinez, in accordance with the terms of the agreement (R.A. 99a, 103a).

2. *Proceedings Below*—On October 11, 1946, petitioner filed the present libel in the District Court for the Southern District of New York (R.A. 2a). After a trial, the District Court found the United States liable in damages, entered an interlocutory decree against the United States, and referred the action to a Commissioner for the ascertainment of damages (R.A. 2a). The Commissioner found that Paula Liendo is the surviving lawful wife of Cardenas and that Antonia Martinez is not entitled to recover under the Death on the High Seas Act, *supra* (R.A. 17a, 20a).[4] He further found that the pecuniary loss suffered by Paula Liendo because

---

[4] With respect to the agreement of April 20, 1946, between Paula Liendo and petitioner, *supra*, p. 4, n. 3, the Commissioner stated as follows (R.A. 19a-20a):

"Since your Commissioner believes that Antonia Martinez has no status to permit recovery under the Death on the High Seas Act, the contract is not relevant to this matter.

"Furthermore, there is grave doubt that in view of the provisions of that agreement, it could have any effect on a recovery under the Act. Such a recovery does not appear to become any part of the residuary estate, but rather, according to its terms, is a suit by the personal representative for the exclusive benefit of each of the persons specified in the statute. If the contract is to be given any effect it is probably as an agreement that the total amount of compensation recovered by the two women be pooled into one fund and then be divided on a percentage basis between them. However, such an arrangement cannot possibly create any rights against the Government or any obligation on its part and it does not come within the scope of the matters submitted to your Commissioner for his determination. It seems rather a matter for disposition by the Administrator in connection with his accounting in the Surrogate's Court."

of Cardenas' death is the sum of $6,000 (R.A. 22a). Since she had previously received $4,000 under the Second Seamen's War Risk policy, that sum was deducted from the amount of the recovery and a net award of $2,000 was made (R.A. 23a).[5]

On petitioner's exceptions to the report of the Commissioner, the District Court affirmed the award with respect to Paula Liendo, and held that Antonio Martinez is also entitled to recover under the Act as a "wife"—although not as a "dependent relative" (R.A. 24a-32a). The case was then remanded to the Commisioner, who filed a supplementary report awarding Antonia Martinez $14,250, less the $1,000 previously paid her under the War Risk policy, or a net award of $13,250 (R.A. 35a-41a).

Various motions and exceptions were then heard by the District Court (R.A. 43a), a second supplementary report was filed by the Commissioner (R.A. 44a-52a), and a decree was finally entered on October 25, 1950, awarding $2,000 to Paula Liendo and $13,250 to Antonia Martinez (R.A. 55a-56a). On appeal, the court below affirmed the sufficiency of the award to Paula Liendo (R.A. 122), but struck out the award to Antonia Martinez on the ground that she is neither the "wife" nor the "dependant relative" of Cardenas within the meaning of the Act (R.A. 120-122).

---

[5] The propriety of this off-set *pro tanto* is not challenged by petitioner.

ARGUMENT

Section 1 of the Death on the High Seas Act, *supra*, provides, in pertinent part, that "the personal representative of the decedent may maintain a suit for damages * * * for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative * * *." Section 2 states that "the recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered * * *." The Act thus requires two determinations to be made by the court after liability has been fixed. First, the court must determine whether the claimants for whose benefit the suit has been brought are permissible beneficiaries under the Act. Second, the court must ascertain the amount of pecuniary benefits those permissible beneficiaries might reasonably have expected had the deceased lived, taking into account their degree of dependency upon the deceased. The decision below on the ineligibility of the putative wife is in accord with numerous federal and state decisions under analogous statutes; the amount of damages awarded the lawful wife was generous on the present record. There is no conflict of decision on either point and no occasion for further review.

1. (a). Petitioner, as administrator of the estate of the deceased, here contends that both the

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	3
Argument	7
Conclusion	12

CITATIONS

Cases:

Atlantic City R. Co. v. *Goodin*, 62 N.J. Law 394, 42 Atl. 333	10
Beebe v. *Moormack Gulf Lines, Inc.*, 59 F. 2d 319, certiorari denied, 287 U.S. 597	9
Blanks v. *Southern Ry. Co.*, 82 Miss. 703, 35 So. 570	10
Bolin v. *Marshall*, 76 F. 2d 668, certiorari denied, 296 U. S. 573	9
Castor v. *United States*, 174 F. 2d 481, certiorari denied, 338 U.S. 836	9
Cavanaugh v. *United States*, 94 F. Supp. 776	9
Eason v. *Alexander Shipyards*, 47 So. 2d 114	10
Esty v. *Clark*, 101 Mass. 36	11
Ft. Worth & R.G. Ry. Co. v. *Robertson*, 103 Tex. 504, 131 S. W. 400	10
Gehm v. *United States*, 83 F. Supp. 1003	9
Green v. *Crowell*, 69 F. 2d 762, certiorari denied, 293 U.S. 554	9
Hall v. *Industrial Comm'n*, 165 Wis. 364, 162 N.W. 312	10
Holmes v. *Pere Marquette R. Co.*, 28 Ohio App. 297, 162 N.E. 675	9
Illinois Steel Co. v. *Industrial Comm'n*, 290 Ill. 594, 125 N.E. 252	10
Jones v. *George R. Cooke Co.*, 250 Mich. 460, 231 N.W. 40	10
Kendall v. *Housing Authority of Baltimore*, 76 A. 2d 767	10
McIntyre v. *St. Louis & San Francisco Ry. Co.*, 286 Mo. 234, 227 S.W. 1047, certiorari denied, 255 U.S. 573	9
Meisenhelder v. *Chicago & N.W. Ry. Co.*, 170 Minn. 317, 213 N.W. 32	8
Middleton v. *Luckenbach S.S. Co.*, 70 F. 2d 326, certiorari denied, 293 U.S. 577	8

lawful wife and the putative wife of a bigamous seaman are entitled to recover damages under the Act. On its face, this contention is refuted by the plain language of the Act which provides for damages for the benefit of the decedent's "wife." Plainly, Congress did not intend to confer the right to damages upon plural wives. In the absence of any manifestation of Congressional intention to the contrary, it must be assumed that Congress employed the word "wife" in its normal and common meaning. Cf. *Woodward* v. *United States*, 341 U.S. 112. And, as the court below pointed out, "the common meaning of 'wife' is legal wife; and a bigamous marriage does not make the defrauded and innocent woman a 'wife' in common parlance. * * * we see nothing to suggest that [Congress] used the word in other than its normal meaning, or intended that a man could have two or more wives, all recovering at once under this statute." (R.A. 120).[6]

Analogous decisions under similar federal and state statutes support this reading of the word "wife." The words "wife" or "widow" in federal statutes are almost uniformly construed to include only the legal wife. Decisions so holding under the Federal Employers' Liability Act (45 U.S.C. 51) are: *Meisenhelder* v. *Chicago & N.W. Ry. Co.*, 170

[6] Since federal law is determinative of the interpretation of the word "wife" in the Act (*Middleton* v. *Luckenbach S.S. Co.*, 70 F. 2d 326 (C.A. 2), certiorari denied, 293 U.S. 577), petitioner's reliance on Section 1140-a of the New York Civil Practice Act (Pet. pp. 9, 13) is misplaced.

Minn. 317, 213 N.W. 32; *McIntyre* v. *St. Louis & San Francisco Ry. Co.*, 286 Mo. 234, 227 S.W. 1047, certiorari denied, 255 U.S. 573; *Holmes* v. *Pere Marquette R. Co.*, 28 Ohio App. 297, 162 N.E. 675; under the Jones Act (46 U.S.C. 688): *Beebe* v. *Moormack Gulf Lines, Inc.*, 59 F. 2d 319 (C.A. 5), certiorari denied, 287 U.S. 597 (this despite the fact that under Louisiana law the putative wife had certain rights against the estate); *In re Tufts' Estate*, 228 Wis. 221, 280 N.W. 309; under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 909): *Bolin* v. *Marshall*, 76 F. 2d 668 (C.A. 9), certiorari denied, 296 U.S. 573; *Green* v. *Crowell*, 69 F. 2d 762 (C.A. 5), certiorari denied, 293 U.S. 554; under the National Service Life Insurance Act (38 U.S.C. 802(g): *United States* v. *Snyder*, 177 F. 2d 44 (C.A.D.C.); *Schurink* v. *United States*, 177 F. 2d 809 (C.A. 5); *Castor* v. *United States*, 174 F. 2d 481 (C.A. 8), certiorari denied, 338 U.S. 836; *Cavanaugh* v. *United States*, 94 F. Supp. 776 (W.D. Mo.); *Gehm* v. *United States*, 83 F. Supp. 1003 (S.D.N.Y.); under the War Risk Insurance Act (38 U.S.C. 511): *United States* v. *Robinson*, 40 F. 2d 14 (C.A. 5) (interpreting the word "spouse").

Similarly, under State wrongful death statutes putative wives have been excluded from the category of "wife." *Neely* v. *Tennessee, G. & A. R. Co.*, 145 Ga. 363, 89 S.E. 325; *Toledo, Wabash & Western Ry. Co.* v. *Brooks*, 81 Ill. 245; *Vaughan* v. *Dalton-Lard Lumber Co.*, 119 La. 61, 43 So. 926; *Philip*

v. *Heraty,* 135 Mich. 446, 97 N.W. 963; *Blanks* v. *Southern Ry. Co.,* 82 Miss. 703, 35 So. 570; *Pope* v. *Missouri Pacific Ry. Co.,* 175 S.W. 955 (Sup. Ct. Mo.); *Atlantic City R. Co.* v. *Goodin,* 62 N.J. Law 394, 42 Atl. 333; *Molz* v. *Hansell,* 115 Pa. Super. 338, 175 Atl. 880; *Ft. Worth & R. G. Ry. Co.* v. *Robertson,* 103 Tex. 504, 131 S.W. 400.[7]

(b). Petitioner further argues that, if both the lawful wife and the putative wife cannot be the decedent's "wife" under the Act, the putative wife comes within the phrase "dependent relative." But it is hardly to be supposed that, if Congress did not intend more than one wife to recover damages as the decedent's "wife," it nevertheless intended to permit plural wives to obtain awards as "dependent relatives." The short answer was given by the court below. "The right conferred is not for the benefit of all dependents but only for dependent relatives. The 'putative' wife is not a 'relative' in common parlance." (R.A. 121-122). The word "relative" is commonly defined as "a

---

[7] In addition, State Workmen's Compensation Acts usually permit only the legal wife to recover. *Illinois Steel Co.* v. *Industrial Comm'n,* 290 Ill. 594, 125 N.E. 252; *Jones* v. *George R. Cooke Co.,* 250 Mich. 460, 231 N.W. 40; *Hall* v. *Industrial Comm'n,* 165 Wis. 364, 162 N.W. 312; see 9 Schneider, *Workmen's Compensation Text* (1950 ed.) § 1910. Putative wives have sometimes recovered under these Acts because they came under another classification in the statute, such as "dependent." The cases of *Eason* v. *Alexander Shipyards,* 47 So. 2d 114 (La.); *Kendall* v. *Housing Authority of Baltimore,* 76 A. 2d 767 (Md.); and *Perry* v. *Sun Coal Co.,* 183 Tenn. 141, 191 S.W. 2d 181, which are cited at pp. 17-18 of the petition, fall within this category. In the two remaining cases there cited by petitioner, the putative wife was held to be a common-law wife and, therefore, the legal widow.

person connected with another by blood or affinity." Webster's New International Dictionary (1948 ed.) p. 2102; see also Black's Law Dictionary (3d ed.) p. 1521. Plainly, a putative wife is not related to her husband by either blood or affinity. Cf. *Esty* v. *Clark*, 101 Mass. 36; *State Street Trust Co.* v. *White*, 305 Mass. 547, 26 N.E. 2d 356 (holding that a legal wife is not within a statute using the terms "child or other relation").

2. Finally, petitioner urges that the award of $6,000 to the lawful wife, Paula Liendo, is inadequate. Petitioner fails, however, to make any showing to support that contention, and, indeed, no such showing can be made on this record. In the language of the court below, "to give her $6,000 seems generous." (R.A. 122).[8] See the Report of the Commissioner (R.A. 21a-22a).[9]

---

[8] As previously noted, *supra*, p. 6, the net award was $2,000. The sum of $4,000, representing the insurance proceeds previously paid to her, was off-set from the total award of $6,000.

[9] With respect to the decedent's earning capacity, the Commissioner found that Cardenas had a life expectancy of 40.17 years; that he had not gone beyond the seventh grade in school; that the record is silent as to his means of support prior to the issuance of his seaman's papers in July, 1943; that he earned $1571.75 in 1944; and that had he chosen to continue following the sea, he would have been seriously handicapped in opportunities for work as an alien. With respect to the dependency of Paula Liendo upon Cardenas, the Commissioner found that, for the seven weeks during which Paula Liendo and he lived together, he paid the rent but contributed nothing more to her support; that, after he deserted her, he made no further contribution to her support and did not communicate with her. The Commissioner then assumed that Cardenas might have been compelled to contribute $30.00 monthly to Paula Liendo during the rest of his estimated life, and capitalized the present value of those contributions to arrive at the sum of $6,000.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.

HOLMES BALDRIDGE,
Assistant Attorney General.

PAUL A. SWEENEY,
BENJAMIN FORMAN,
Attorneys.

FEBRUARY, 1952

☆ U. S. GOVERNMENT PRINTING OFFICE: 1952 989747 799